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Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

WHITNEY ANNE-MARIE ORLANDO,

CV No. 3:13-cv-01649-PK

Plaintiff,

v.

PORLAND STATE UNIVERSITY, an
Oregon public university, and MARCIA
KLOTZ,

Defendants.

DECLARATION OF SHARAE M.
WHEELER IN SUPPORT OF
DEFENDANTS' MOTION TO COMPEL
DOCUMENTS IN RESPONSE TO
SUBPOENA AND MEMORANDUM IN
SUPPORT

I, Sharae M. Wheeler, declare that:

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PDXDOCS:2033245.2

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1. I am one of the attorneys for Defendants Portland State University and Marcia Klotz. I make this declaration on personal knowledge or from sources deemed reliable. I am competent to testify with respect to the matters set forth below.

2. On April 11, 2014, Defendants served third party Battelle Memorial Institute ("Battelle") with a subpoena duces tecum via Battelle's registered agent in Oregon. A true and accurate copy of this subpoena is attached as Exhibit 1 to this declaration. A true and accurate copy of the cover letter accompanying the subpoena is attached as Exhibit 2. The subpoena directed Battelle to produce documents at Defendants' counsel's office in Portland, Oregon on or before April 25, 2014.

3. Battelle did not object to the subpoena, respond to the subpoena, or produce requested documents by April 25.

4. On April 30, 2014, counsel for Defendants contacted G. Drew Fuller, Senior Attorney for Battelle, via telephone. Mr. Fuller informed counsel that Battelle was still looking for documents that are responsive to Defendants' subpoena. Mr. Fuller stated that he did not know how many responsive documents exist. Mr. Fuller expressed a willingness to cooperate with Defendants by producing any responsive documents that Battelle does locate, but it became clear that Battelle would not be prepared to produce documents to Defendants' counsel by the May 1, 2014, discovery deadline in this case.

5. Defendants' counsel notified Mr. Fuller via voicemail on April 30, 2014, that they will continue to work with Battelle to obtain the documents, but that, due to the May 1 discovery deadline, a motion to compel the documents would need to be filed to preserve plaintiffs' rights to obtain the documents from Battelle.

6. Battelle has not yet produced any documents in response to the subpoena. In a May 1, 2014, e-mail, Mr. Fuller stated that Battelle will make an effort to produce responsive documents by the close of business on Monday, May 5, 2014.

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Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 1st day of May, 2014, at Portland, Oregon.

/s/ Sharae M. Wheeler

Sharae M. Wheeler

I hereby certify that I served the foregoing declaration of Sharae M. Wheeler in support of Defendants' motion to compel production of documents in response to subpoena and memorandum in support on:

Mr. Bear Wilner-Nugent
Attorney at Law
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Attorney for Plaintiff
SERVED BY CM/ECF system transmission

G. Drew Fuller
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505 King Avenue
Columbus, OH 43201-2696
fullerg@battelle.org
**SERVED BY FIRST-CLASS MAIL,
POSTAGE PREPAID, AND BY E-MAIL**

Battelle Memorial Institute
c/o of its registered agent CT Corporation
388 State Street, Suite 420
Salem, Oregon 97301
SERVED BY HAND-DELIVERY

by the following indicated method or methods on the date set forth below:

- CM/ECF system transmission.**
- E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- Facsimile communication device.**
- First-class mail, postage prepaid.**
- Hand-delivery.**
- Overnight courier, delivery prepaid.**

DATED this 1st day of May, 2014.

/s/ Sharae M. Wheeler

Sharae M. Wheeler
OSB No. 115525
Of Attorneys for Defendants

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